

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

**LINDA SMEDLEY, as Administratrix of
THE ESTATE OF EARL ELTON SMEDLEY,**

Plaintiff,

v.

**CIVIL ACTION NO. 3:06-CV-104
(BAILEY)**

**RUSSELL LYNN BREWER, and
MSM TRUCKING, INC.,
d/b/a WOMCO TRUCKING, and
WOMCO TRUCKING,**

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART MOTION TO STAY PENDING
RESOLUTION OF CRIMINAL ACTION NO. 06-M-4019-4021 AND FOR PROTECTIVE
ORDER**

Before this Court is a Motion to Stay and for Protective Order staying the deposition of Russell Lynn Brewer [Doc. No. 54], filed by defendants. In the motion, defendants seek a stay of these proceedings until the parallel criminal proceeding is resolved. The defendants also seek a protective order staying the taking of Russell Lynn Brewer's deposition in order to avoid any conflict with Mr. Brewer's Fifth Amendment rights. The plaintiff filed a Response [Doc. No. 64] in which she requests this Court deny the stay.

The Court heard oral argument on the Motion on October 4, 2007. The Court, after hearing the arguments, ordered that the deposition of Russell Lynn Brewer be stayed until the conclusion of the criminal proceedings, but that the rest of discovery may proceed as planned. Deposition of Mr. Brewer's employer or corporate representatives will be under seal. The Court also ordered the parties to produce an agreed protective order or each

party produce a protective order by October 12, 2007. The Court notes that an agreed protective order was filed on October 16, 2007.

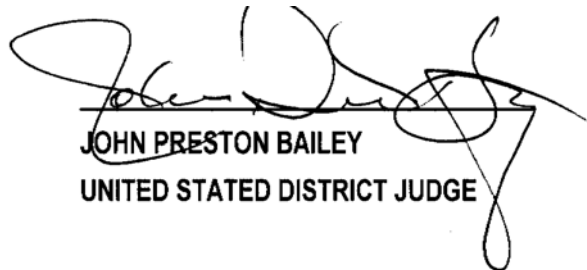
Accordingly, the defendants' Motion to Stay and for Protective Order [Doc. No. 54] is hereby **GRANTED IN PART AND DENIED IN PART**. The stay on Russell Lynn Brewer's deposition shall be lifted as soon as the criminal case is resolved.

A **status conference** is set for **January 11, 2008, at 11:30 a.m.** Furthermore, the **trial** set for **February 4, 2008** will begin at **8:30 a.m.** rather than 9:30 a.m.

It is so **ORDERED**.

The Clerk is hereby directed to transmit copies of this Order to counsel of record herein.

DATED: October 25, 2007.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE